

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Penalty Assessment  
Against

AERO CONSTRUCTION

In the amount of \$20,000

DOCKET DG-180992

JOINT NARRATIVE IN SUPPORT OF  
SETTLEMENT AGREEMENT

**I. INTRODUCTION**

1 This Joint Narrative in Support of Settlement Agreement (“Narrative”) is filed pursuant to WAC 480-07-740(3)(a) on behalf of Aero Construction (“Aero Construction”) and Staff of the Washington Utilities and Transportation Commission (“Commission Staff”) (collectively “the Parties”). The Parties have signed the Stipulation and Settlement Agreement (“Agreement”), which is being filed concurrently with this Narrative. This Narrative supports the Agreement and demonstrates that it is consistent with the law and the public interest. It is not intended to modify any terms of the Agreement.

**II. PROPOSALS FOR REVIEW PROCEDURE**

2 In accordance with WAC 480-07-740, the Parties propose the following settlement consideration procedure for review of the proposed Agreement. The Parties believe that this matter is a less complex matter under WAC 480-07-740(2)(b). It was set for hearing as a brief adjudicative proceeding, which is available for limited types of proceedings including contested penalty assessments. Accordingly, the Parties submit that conducting a hearing will not assist the Commission to decide whether to approve and adopt the Agreement. If the Commission conducts a hearing, however, the Parties will present one or more witnesses to testify in support of the Agreement and to answer questions concerning the Agreement's

details, costs, and benefits. WAC 480-07-740(3)(b). In addition, counsel for each party will be available to address any legal matters associated with the Agreement.

3           The Parties do not intend to file documentation supporting the Agreement, with the exception of the Agreement itself and this Narrative. If the Commission requires supporting documents beyond the Agreement, Narrative, and the other documents on file in this docket, the Parties will provide documentation as needed.

### **III.           SCOPE OF THE UNDERLYING DISPUTE**

4           The underlying dispute concerns penalties assessed by the Commission against Aero Construction for three alleged violations of the Underground Utility Damage Prevention Act, located at chapter 19.122 RCW.

5           On January 23, 2019, the Commission served a penalty assessment of \$20,000 against Aero Construction for three alleged violations of RCW 19.122.030(2), for failing to provide the required notice to a one-number locator service not less than two business days before excavating, and one violation of RCW 19.122.030(6)(c), for failing to provide additional notification of continued excavation to facility operators using the one-call notification system. The penalty assessment alleged the following three violations of Chapter 19.122 RCW:

1.       On April 27, 2017, workers for Aero damaged a 5/8” PSE natural gas service line while breaking through a hardpan layer with a digging bar at 10254 NE 21st Pl., Bellevue, Washington. Both the Damage Information Reporting Tool (DIRT) report submitted by PSE and the one-call ticket database indicated that Aero submitted a request to locate underground utilities on

April 25, 2017, but failed to wait the required two full business days as required by RCW 19.122.030(2) before beginning excavation.

2. On July 26, 2017, while working on a water main at 15840 NE 15th St, Bellevue, Washington, Aero damaged a 2” PSE natural gas main. Aero submitted a request to locate underground utilities on June 1, 2017, and obtained a valid dig ticket for the work, but the ticket expired on July 16, 2017, 45 days after the initial request. Aero failed to provide additional notification of continued excavation to facility operators using the one-call notification system as required by RCW 19.122.030(6)(c), until July 27, one day after damaging the gas line.

3. On August 30, 2018, Aero was excavating at 1474 158th Pl NE, Bellevue, Washington, and damaged a 1-1/4” PSE natural gas stub. The DIRT report and additional damage report information submitted by PSE alleged that Aero was excavating outside of the work area for which it had a valid dig ticket.

6 On February 5, 2019, Aero Construction filed a contest of penalties and requested a hearing to contest the second and third violation. Aero Construction did not contest the first violation. On February 26, 2019, the Commission issued a Notice of Brief Adjudicative Proceeding. This Notice scheduled a hearing for April 18, 2019 and set a deadline of April 11, 2019 to file any documents for consideration.

7 On March 12, 2019, the Parties attended a settlement conference to resolve the disputed issues in this docket number. On March 13, 2019, the Parties came to an agreement in principle on the terms of the Agreement.

#### IV. DESCRIPTION OF PROPOSED STIPULATION AND SETTLEMENT AGREEMENT

8           The Agreement resolves all of the issues in dispute. The Agreement provides for a penalty against Aero Construction in the amount of \$7,500. Aero Construction will pay \$5,000 of this amount to the Commission within thirty (30) days of the date the Commission approves the Agreement. The remaining \$2,500 will be suspended upon the condition that Aero Construction commit no future violations of chapter 19.122 RCW for a period of one (1) year from the date the Commission approves the Agreement.

9           The Agreement further provides that Aero Construction admits to the violation that occurred on April 27, 2017 and the violation that occurred on July 26, 2017.

10          The Agreement stipulates that Aero Construction did not commit the alleged violation that occurred on August 30, 2018. Commission Staff has agreed to this stipulation in light of the explanation provided by Aero Construction to Staff at a settlement conference that occurred on March 12, 2019. The Company explained that it believed that the excavation on this date was within the parameters of one of its locates. This locate was identified as: Washington Ticket #: 18319458. When issuing its penalty assessment, Staff did consider this locate and believed that it could be interpreted to exclude the area where the excavation was performed. However, in light of Aero Construction's explanation, the fact the Company had several other valid locates in the area when it excavated, and to aid in the orderly settlement of this case, Staff is willing to stipulate that the Company did not commit this violation.

11          The Agreement provides that Staff will not pursue further enforcement against Aero Construction arising out of the excavations described in the penalty assessment in this docket number. Staff is not aware of any other potential violations by Aero Construction

associated with the incident underlying this proceeding, and has no plans for additional enforcement proceedings related to the incidents.

12           The Agreement provides that Aero Construction will attend Washington 811 safety training as a term of the Agreement. These trainings will take place on April 12, July 26, and October 18, 2019. Staff believes that attending these trainings will help ensure that the Company will be in future compliance with Chapter 19.122 RCW.

13           The Agreement also contains a commitment by Aero Construction to make a good faith effort to comply with chapter 19.122 RCW in the future. Further that the Company commits to continually update its internal policies when it deems necessary to comply with Chapter 19.122.

**V.       STATEMENT OF PARTIES' INTERESTS AND THE PUBLIC INTEREST**

14           As stated in the Agreement, the Agreement represents a compromise of the positions of the two parties. The Parties find it is in their best interests to avoid the expense, inconvenience, uncertainty, and delay inherent in a litigated outcome. Likewise, it is in the public interest that this dispute conclude without the further expenditure of public resources on litigation expenses.

15           This Agreement was also entered into in light of WAC 480-07-700, which states, “[t]he commission supports parties’ informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.”

16           The Agreement is in the public interest because Aero Construction has committed to future compliance with chapter 19.122 RCW, as a term of the Agreement. Staff believes that Aero Construction has demonstrated a good faith effort to comply with chapter 19.122 RCW since issuing the penalty assessment. For instance, the Company has stated that it has

implemented a “locate log” to inform its employees of which locates are active and can be used to perform an excavation. Aero Construction has stated that this locate log is now updated on a weekly basis. Staff believes this is a good first step and will be helpful in preventing violations similar to the two violations admitted to in the Agreement.

17           The Agreement is also in the public interest because Aero Construction has committed to go to at least three future Washington 811 safety trainings, as a term of the Agreement. These trainings will provide the Company with information on the best procedures and practices to comply with chapter 19.122 and to protect the public. Given the information provided in these trainings, the Company has further committed to make additional changes to its internal policies in the future, when it deems necessary, to comply with chapter 19.122.

18           Staff is satisfied that the Agreement reflects a penalty that is appropriate given the two violations that Aero Construction has admitted to. Further, Staff believes that the suspended penalty of \$2,500 is sufficient to encourage future compliance by Aero Construction.

19           As noted above, Staff is willing to stipulate the Company did not commit the alleged violation on August 30, 2018 in light of an explanation provided to Staff by Aero Construction at a settlement conference that occurred on March 12, 2019. Because Staff is willing to stipulate to this, the Parties agreed to drop the penalty amount by \$10,000. Staff also agreed to reduce the penalty amount of the violation that occurred on July 26, 2017 from \$5,000 to \$2,500 in suspended penalties in light of mitigating circumstances and to facilitate the orderly settlement of this docket number.

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**VI. LEGAL POINTS THAT BEAR ON PROPOSED SETTLEMENT**

21 In WAC 480-07-700, the Commission states its support for parties' informal efforts to resolve disputes without the need for contested hearings when doing so is lawful and consistent with the public interest.

22 Pursuant to WAC 480-07-740, the Commission reviews settlement agreements to determine whether they comply with applicable legal requirements and whether approval of the agreements is consistent with the public interest.

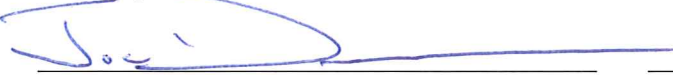
**VII. CONCLUSION**

23 The Agreement resolves all of the issues in this docket and the Parties submit that their resolution complies with the applicable legal requirements and is consistent with the public interest. The Parties respectfully request that the Commission issue an order approving the Agreement in its entirety.

Respectfully submitted this 22nd day of March, 2019.

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION

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Counsel for AERO CONSTRUCTION

Dated: March \_\_\_\_\_, 2019

Dated: March 22, 2019

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